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5 BILL NO. R-74-09-12 (AS AMENDED)

6 RESOLUTION NO. R-74-74

7 A RESOLUTION authorizing the Mayor to  
8 agree to certain clarification in a Lease  
9 Agreement with Indiana & Michigan Electric  
Company.

10 WHEREAS, the Indiana & Michigan Electric Company ("I & M")  
11 is requesting an expression from the City of Fort Wayne with regard to  
12 clarification and understanding of certain language contained in paragraph  
13 2 of Article XVI of that certain proposed Lease Agreement with said City,  
which was the subject of Declaratory Resolution No. R-13-74, adopted by  
the Common Council of said City on March 12, 1974; and

14 WHEREAS, I & M has submitted a letter to the City embodying  
15 such clarification and understanding, a copy of which letter is attached to  
16 this Resolution and made a part hereof; and

17 WHEREAS, the Common Council finds it unnecessary to  
18 consider the accuracy of the other matters set forth in said letter;

19 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL  
OF THE CITY OF FORT WAYNE, INDIANA THAT:

20 The Mayor of the City be and he hereby is authorized to  
21 indicate the acceptance of the City by signing said letter in the space therein  
22 provided, such acceptance being limited to acceptance of the clarification  
and understanding of paragraph 2 of the aforesaid Article XVI, without  
prejudice to any of the City's other rights.

23  
24 Paul M. Burns  
25 Councilman  
26  
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28 *Approved as to form and legality:*  
29 *John H. Logan*  
30 *Council Attorney.*  
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Read the first time in full and on motion by \_\_\_\_\_, seconded by \_\_\_\_\_, and duly adopted, read the second time by title and referred to the Committee on \_\_\_\_\_ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_\_, at \_\_\_\_\_ o'clock P.M., E.S.T.

Date: \_\_\_\_\_

CITY CLERK

Read the third time in full and on motion by Burns, seconded by Hinga, and duly adopted, placed on its passage.

Passed (~~lost~~) by the following vote:

	AYES <u>6</u>	NAYS <u>1</u>	ABSTAINED _____	ABSENT <u>2</u> to-wit:
BURNS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINGA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
KRAUS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>A</u>
MOSES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NUCKOLS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHMIDT, D.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>A</u>
SCHMIDT, V.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
STIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TALARICO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATE: Sept 13, 1974

Charles W. Westerman  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. B-74-74 on the 13th day of September, 1974.

ATTEST: (SEAL)

Charles W. Westerman  
CITY CLERK

Samuel J. Fickens  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of September, 1974, at the hour of 9:30 o'clock P. M., E.S.T.

Charles W. Westerman  
CITY CLERK

Approved and signed by me this 13th day of September, 1974, at the hour of 9:30 o'clock P. M., E.S.T.

Paul A. Fickens  
MAYOR

1.  
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4 BILL NO. R-74-09-12

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20 WHEREAS, the Common Council finds it unnecessary to consider  
21 the accuracy of the other matters set forth in said letter;

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26 vided, such acceptance being limited to acceptance of the clarification and  
27 understanding of the aforesaid Article XVI, without prejudice to any of the  
28 City's other rights.  
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31  
32  
33   
34 Councilman  
35

APPROVED AS TO FORM  
AND LEGALITY

  
CITY ATTORNEY



**INDIANA & MICHIGAN ELECTRIC COMPANY**

2101 Spy Run Avenue, P. O. Box 60, Fort Wayne, Indiana 46801

September 12, 1974

City of Fort Wayne  
City-County Building  
Fort Wayne, Indiana 46802

Attention: Mayor and Common Council

Gentlemen:

By letter of August 24, 1972, the City of Fort Wayne requested that Indiana & Michigan Electric Company submit a lease proposal for the Fort Wayne City Light facilities. Preliminary studies, investigations and conferences ensued for a number of months and a preliminary draft of a lease proposal was prepared and submitted. Study, negotiations and conferences with respect to the terms and provisions of a lease agreement were then pursued by representatives and counsel for the City and the Company until March 8, 1974, when the terms and provisions of a lease agreement were finalized by the Mayor of the City and proper representatives of the Company.

On March 12, 1974, the Common Council adopted its Declaratory Resolution, including a copy of the Lease Agreement, which provided for the submission of such Resolution and Lease Agreement to the qualified voters of Fort Wayne at a special election to be held on May 7, 1974. At such special election more than a majority of the votes were cast for the Declaratory Resolution.

On June 11, 1974, the Common Council adopted its ordinance confirming the Declaratory Resolution and the execution of the policy thereof and authorized the execution and performance of the Lease Agreement.

Since representatives and counsel of the City and the Company put the Lease Agreement in final form on March 8, 1974, serious and important costs and financial and operational problems have arisen with respect to the Company's public utility business, finances and operations. Such costs and problems were not evident or in existence when the provisions of the Lease Agreement were negotiated and put in final form.

By reason of the foregoing increased costs and financial and operational problems and developments, it has become necessary for the Company to file petitions with the Public Service Commission of Indiana to increase its

**MADE A MATTER OF RECORD**

DATE 9-13-74 CHARLES W. WESTERMAN, CITY CLERK

present electric rates applicable to all classes of Indiana customers. The situation is so serious and immediate that it was necessary to promptly seek rate increases to prevent injury to the Company's business and properties, and lack of proper and reliable and adequate service to its customers.

In view of the foregoing, the Company has considered the provisions of Article XVI of the Lease Agreement relative to the Company's rate increases to its customers including customers now served by the City. It provides:

"At this time, the Company has no current plan to file with the Public Service Commission of Indiana a request for a rate increase, nor will it use the execution of the lease herein as a basis to file for such a rate increase.

"The Company, as well as other electric suppliers, is subject to increasing costs and to severe environmental regulations which will require the expenditure of very large sums of money for new equipment and which also will result in much higher operating costs. The Company will exert all reasonable efforts to avoid having to meet these costs with rate increases. But, in any event, no increase in rates affecting Fort Wayne customers would be sought which was not sought similarly applicable to all customers of the Company in Indiana."

At the time the Lease Agreement was finalized, the Company had no current plans to file with the Public Service Commission of Indiana a request for rate increases.

Article XVI is only a recital of the Company's plans as of March 8, 1974, and is not a covenant or obligation with regard to rate increases subsequent to that date.

Please review and consider the contents of this letter, and indicate your understanding that the Company in making plans to file, and the filing, with the Public Service Commission proceedings for rate increases applicable to all Indiana customers and proceeding to obtain, and in

September 12, 1974

obtaining, such rate increases are in no way now, at the time of the execution of the Lease Agreement, or at any time thereafter, prohibited by, or in violation of, or in default of, any of the provisions of the Lease Agreement. Your response to this letter is most important.

Very truly yours,

INDIANA & MICHIGAN ELECTRIC COMPANY

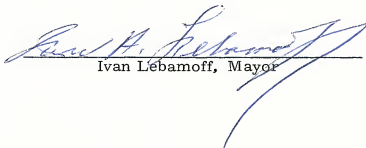
By   
R. M. Kopper, Executive Vice President

ACCEPTANCE

The City of Fort Wayne, Indiana pursuant to authorization of its Common Council, concurs in and accepts the understandings set forth in the above and foregoing letter.

Dated in Fort Wayne, Indiana, this 13th day of Sept,  
1974.

CITY OF FORT WAYNE, INDIANA

  
Ivan Lebamoff, Mayor

FORT WAYNE MUNICIPAL ELECTRIC UTILITY

LEASE AGREEMENT

CITY OF FORT WAYNE, LESSOR

And

INDIANA & MICHIGAN ELECTRIC COMPANY, LESSEE

Dated *SEPTEMBER 13*, 1974

## LEASE AGREEMENT

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- III - TREATMENT OF, AND EMPLOYEE BENEFITS TO, CITY EMPLOYEES
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  - 3.2 Municipal Pension Plan and Indiana Public Employees Retirement Fund
  - 3.3 Supplementary Pension Plan
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- V - APPROVAL OF LEASE BY INDIANA PUBLIC SERVICE COMMISSION AND BY QUALIFIED VOTERS, AND AUTHORIZATION BY COMMON COUNCIL
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LEASE AGREEMENT BETWEEN THE CITY OF FORT WAYNE,  
INDIANA AND INDIANA & MICHIGAN ELECTRIC COMPANY

THIS LEASE AGREEMENT (hereinafter referred to as the "Agreement"), made this      day of      , 197   , by and between the City of Fort Wayne, a municipal corporation of the State of Indiana (hereinafter referred to as "City"), acting by and through its Common Council and Mayor, and Indiana & Michigan Electric Company, an Indiana corporation (hereinafter referred to as "Company"), acting by and through its Executive Vice President and Assistant Secretary.

W I T N E S S E T H:

In consideration of the rental, covenants, stipulations and agreements herein contained, City and Company do hereby grant, covenant, stipulate and agree as follows:

ARTICLE I

1.1 The City, upon and subject to the terms and conditions hereinafter contained, does hereby let, demise and lease unto the Company the following described properties and facilities (hereinafter designated as "Leased Property"), to-wit:

(a) All of the electric utility system as now owned, operated and used and useful by the City in the rendering of electric utility service in and adjacent to Fort Wayne, Indiana, including all land, buildings and real estate; production and power plant equipment and facilities; structures; improvements; substations; overhead conductors; underground conduits and conductors; lines; towers; poles; cross-arms; bases; guys; guy wires; cables; ground wires; insulators; transformers; switches; lightning arrestors; meters; services; easements; rights of way; and any and all other property owned, held, used or useful by the City as a part of the aforesaid electric utility system.

It is specifically understood and agreed that the Leased Property shall include, but shall not be limited to, the following:

1. All electric generating facilities of the City, including the Lawton Park Generating Plant and its new boiler and including the Fourth Street Generating Plant. Specific reference is hereinafter made with regard to the use of the Lawton Park Generating Plant which will cover this facility.

2. Facilities used jointly for the purposes of the City's electric utility system and municipal street lighting, with the right in the City to continue the use of such facilities now being made by it for street lighting purposes free of any charges. City shall always maintain the right in itself to make changes and alteration of any kind or character in its municipal street lighting system in compliance with construction, electrical and safety codes.

(b) There shall be excepted and excluded from the Leased Property the following:

1. The street lighting system together with all luminaires, brackets, poles, conductors and other facilities used exclusively for street lighting.

2. All transportation equipment, materials, tools, material handling and other equipment and vehicles used and useful in the operation and maintenance of the City's electric utility system, which will be purchased by the Company at market value upon the terms and conditions to be contained in a written contract of sale to be executed by both parties concurrently with the execution of this Agreement. If the parties fail to agree upon market value, a disinterested appraiser acceptable to both parties shall be appointed to determine said market value and such determination shall be conclusive and binding on the parties; provided, however, if the parties fail to reach an agreement as to an acceptable appraiser, the parties shall make written application to the American Arbitration Association to submit by registered mail to each of the City and the Company the names and addresses of three persons as prospective appraisers, and within fifteen (15) days after receipt of such names the parties shall then choose the appraiser by the City and the Company, in that order, alternately striking a name from the list until only one remains, and he shall be the appraiser to determine said market value and such determination shall be conclusive and binding on the parties.

3. The land, warehouse and storage facilities located at Lafayette and Wallace Streets, together with all office furniture, equipment and fixtures located therein and used and useful in the operation of the City's electric utility system; provided, however, Company shall have the possession and use of the same until the operations of the Leased Property have been integrated by the Company with the operations of its electric utility properties, but in no event shall such possession and use exceed six months after the date the Company takes possession of the Leased Property as hereinafter in Article IV specified, which date of taking such possession shall be referred to throughout the Agreement as "Closing."

4. All office furniture, equipment and fixtures located in the City-County Building at One Main Street and used and useful in the operation of the City's electric utility system.

5. All materials, supplies, fuel, tools and equipment (including material handling equipment) of the City used by it in the operation and maintenance of its electric utility system, which will be purchased by the Company at market value upon the terms and conditions to be contained in a written contract of sale to be executed by both parties concurrently with the execution of this Agreement. If the parties cannot agree upon market value, a disinterested appraiser acceptable to both parties will be appointed to determine said market value and such determination shall be conclusive and binding on the parties; provided, however, if the parties fail to reach an agreement as to an acceptable appraiser, the parties shall make written application to the American Arbitration Association to submit by registered mail to each of the City and the Company the names and addresses of three persons as prospective appraisers, and within fifteen (15) days after receipt of such names the parties shall then choose the appraiser by the City and the Company, in that order, alternately striking a name from the list until only one remains, and he shall be the appraiser to determine said market value and such determination shall be conclusive and binding on the parties.

6. City's cash, bank deposits, bonds, securities, bills, notes and accounts receivable as of the Closing and any funds which City may receive by way of refund in a case pending before the Federal Power Commission docketed as FPC (E-7740).

7. The corporate records and accounts of the City as of the Closing, except as provided in Article XXII hereof.

8. Customer deposits held by the City on the Closing. The refund of such deposits and any interest payable thereon shall be the responsibility of the City, and the Company shall have no liability with respect to such deposits. Upon assumption of City's accounts, the Company will require no initial security deposits. Any deposits thereafter required will be in compliance with Indiana Public Service Commission Regulations.

9. All other properties, either personal or real, not used or useful in the operation or maintenance of City's electric utility system.

## ARTICLE II

2.1 During the life of this Agreement, the City agrees to execute such assignments, permits, easements and contracts deemed necessary by the Company for it to properly operate and maintain the Leased Property in connection with the Company's electric utility system now existing or as same may hereafter exist during the life of this Agreement, including those authorizing the Company to trim and cut trees located on City property within the City and to use the streets, alleys and public places of the City for the construction, maintenance and operation of a complete and adequate electric utility system to render adequate and reliable service to the customers; and the City shall take any and all further action to facilitate and provide the Company's rendering of adequate and reliable electric service to the customers; provided, however, any such granting by the City shall comply with all reasonable rules and regulations imposed by the Board of Public Works on other utilities.



2.2 The Company shall not be obligated to assume, and the City shall hold the Company harmless from any and all contracts, agreements, obligations and commitments of the City existing or in force on the Closing unless otherwise stated herein or specifically assumed by the Company under instruments in writing. Company has already agreed to assume City's obligation set forth in an instrument dated March 8, 1974, marked Exhibit "A", attached hereto and hereby incorporated herein by reference. In addition to assumption of City's obligation under said exhibit, any and all commitments, purchase orders and contracts entered into by the City in connection with its electric utility operation and incidental to the completion of construction work in progress and unfinished at the time of Closing, in an aggregate amount not to exceed Ten Thousand (\$10,000) Dollars, shall be assumed by the Company; provided, however, any such commitment, purchase order or contract entered into by the City after the date of this Agreement, and prior to the Closing, in an amount in excess of One Thousand (\$1,000.00) Dollars, shall not be assumed by Company unless agreed to by Company in writing separate from this instrument.

### ARTICLE III

3.1 The Company agrees that subject to the Company's general policy as to retirement at age 65, all regular, full-time employees of the City engaged in the operation and maintenance of the Leased Property on the Closing will be offered full-time employment by the Company in the Fort Wayne area. Such employees of the City who elect to work for the Company will have jobs offered them at the same rates of pay provided employees of the Company for performing comparable work. Generally, the rates of pay and the benefits provided by the Company for all such employees will equal or exceed the rates of pay and benefits such employees received from the City on February 15, 1974. Such employees will also receive credit for past service with the City in the application of Company's life insurance, hospital and medical insurance and vacation and sick leave benefit programs to such employees.

3.2 City represents and agrees that employees of the City's electric utility system are not under a single pension plan, nor are all such employees covered by a pension plan; that certain employees participate in a municipal plan; that their payments into this plan have not been separately accounted for and funded; and that there are certain other employees who are under the Indiana Public Employees Retirement Fund. The Company represents and agrees that it will retain the services of Lincoln National Life Insurance Company to develop a plan of pension benefits for all those employees under the municipal plan, which proposed plan will use the combination of (i) all funds collected by City from employees and all funds owed by the City arising from its obligations to the municipal plan as above provided, and (ii) the benefits they will receive under the Company's pension plan; that such plan is to be designed so that on retirement at age 65 of each employee who elects to work for the Company and continues his employment until the age 65, will receive benefits which are greater than those currently scheduled under the City's present program; that the plan to be so developed will provide greater benefits to such employees upon retirement at age 65 than City's present plan; that Company will deduct from its monthly lease rental payments those amounts which represent both the City's financial obligations to the municipal plan and the monies the City has collected from employees for pension purposes. The deductions will be computed by Lincoln National Life Insurance Company on an actuarial basis and will represent actual expenditures by the Company in paying pensions to City employees who elect to work for the Company and subsequently retire at age 65; that Lincoln National Life Insurance Company will also be retained to develop a plan of pension benefits for all those employees under the Indiana Public Employees Retirement Fund, which plan will use the combination of (i) all funds to which such employees are entitled under said retirement fund, such funds to be obtained by them from such retirement fund other than those referred to in Sec. 3.3 below and delivered by them to the Company, and (ii) the benefits they will receive under the Company's pension plan; and that the plan to be so developed will provide comparable benefits to the benefits to be provided for those employees participating in the said municipal plan.



3.3 Certain other City employees who have already established eligibility for pension benefits under the Indiana Public Employees Retirement Fund may wish to remain members of that Fund and receive those pension benefits when they retire from the Company at age 65. For those employees Lincoln National Life Insurance Company will develop a supplementary Company pension plan which will provide comparable benefits to the benefits to be provided for those employees participating in the said municipal plan.

3.4 The City has a Severance Pay Plan at retirement for employees who have completed five (5) consecutive years of service immediately prior to their retirement date. The difference in pension benefits between the existing City retirement plans and the retirement plans to be developed by Lincoln National Life Insurance Company shall be computed for the City employees first two (2) years of retirement. The excess in benefits created by the Lincoln retirement plans over the present City retirement plans shall be deducted from the said severance pay obligation. Any amounts still owing after that deduction shall be paid by Company to the City employee upon retirement. The liability of the City under City's Severance Pay Plan will be assumed by the Company at the time of Closing upon payment by the City of Twenty-five Thousand (\$25,000.00) Dollars.

#### ARTICLE IV

Possession and operation of the Leased Property (referred to as "Closing" throughout the Agreement) shall be delivered by the City to the Company no later than noon on the first day of the third calendar month following the month when the Agreement is properly authorized and executed by City and Company and is legally effective. At the Closing, the Company shall take possession of the Leased Property and shall commence the operation and maintenance of the Leased Property, and the rental to be paid by the Company on the Leased Property as hereinafter set forth shall commence at the same time. From and after the Closing, and subject to the proration provisions of the Agreement, the Company shall have the right to demand, receive and retain for its own purposes all accounts receivable, rents, revenues, income and benefits accruing from the operation of the Leased Property after the Closing Date and continuing until the termination of this Agreement.

#### ARTICLE V

The Company covenants with the City that the Public Service Commission of Indiana has approved the leasing of the Leased Property at the rental and on the terms as provided in this Agreement pursuant to and in accordance with IC 8-1-2-84 (54-510 Burns Indiana Statutes).

The City covenants with the Company that the City, pursuant to and in accordance with IC 18-1-21-1 (48-720 Burns Indiana Statutes), has submitted at a proper election to the qualified voters of Fort Wayne, this Agreement by resolution of the Common Council of the City, and a majority of the votes cast at such election was in favor of such resolution and the leasing of the Leased Property as provided in the Agreement; that the Common Council of the City by ordinance confirmed such resolution; that the City has the legal right to execute this Agreement; that the City has good and sufficient rights, titles and interests in and to the Leased Property for the leasing of same under this Agreement; and that the Company shall have quiet and peaceable possession and use of the Leased Property so long as it shall carry out and perform its obligations under this Agreement.

#### ARTICLE VI

The Company shall pay to the City of Fort Wayne Board of Public Works as custodian of City's Electric Utility, during the original term of the Agreement, which begins with the date of Closing and terminates thirty-five (35) years thereafter as provided by Article XXIV hereafter, the following rentals for the possession, operation, and use of the Leased Property; (i) an annual rental of One Million four hundred forty thousand (\$1,440,000.00) Dollars per year for the first five (5) years of such term; (ii) an annual rental of One Million four hundred ninety thousand (\$1,490,000.00) Dollars for the second five (5) years of such term; (iii) an annual rental of One Million five hundred forty thousand (\$1,540,000.00) Dollars for the third five (5) years of such term; (iv) an annual rental of One Million five hundred ninety thousand (\$1,590,000.00) Dollars per year for the fourth five (5) years of such term; (v) an annual rental of One Million six hundred forty thousand (\$1,640,000.00) Dollars for the fifth five (5) years of such term;

(vi) an annual rental of One Million six hundred ninety thousand (\$1,690,000.00) Dollars for the sixth five (5) years of such term; and (vii) an annual rental of One Million seven hundred forty thousand (\$1,740,000.00) Dollars for the seventh five (5) years of such term. Each year's rental shall be due and payable in equal monthly installments in advance on the first day of each and every month during said term with a proper apportionment for the last partial month at the termination of the Agreement, if applicable. Rental payments made at any time within thirty (30) days after the due date shall not be delinquent.

#### ARTICLE VII

The City agrees to pay all outstanding charges, obligations, debts, claims and expenses of every kind and nature relating to the Leased Property at the date of Closing, including all operating and maintenance costs and expenses, accrued, incurred, arising from or in any way connected with work already performed on the Leased Property prior to the date of Closing. The paragraph, however, shall not abridge any obligations of the Company as set forth in Article II and Article III above.

#### ARTICLE VIII

During the first calendar month following the date of Closing, all meters in service within the Leased Property will be read jointly by the City and the Company on City's regular reading dates. The Company will render bills based upon such readings and collect monies in payment thereof. The Company will then prorate the revenues so billed and collected in such a manner that it will retain only the prorated portion of the revenue for service supplied on and after the date of Closing. The Company will, within ninety (90) days after rendering bills to the customers, pay to the City the prorated portion of revenue as billed and collected for service rendered prior to the date of Closing. The Company will also pay to the City the prorated portion of the revenue from bills not collected within ninety (90) days from the date of Closing except this revenue will be reduced in proportion to the City's collection history for the twelve months prior to Closing. The City shall have the right to make an independent audit of these proceedings.

#### ARTICLE IX

The City covenants and agrees with the Company that it will not sell, encumber or otherwise impair or affect Company's possession, operation of, or interest in, the Leased Property during the term of this Agreement, except as herein provided. The Company further agrees with the City that it will not sell, encumber or otherwise impair or affect City's interest in the Leased Property during the term of this Agreement, except as herein provided.

#### ARTICLE X

10.1 The Company shall, from and after the date of Closing, have full and complete control of the Leased Property except as herein provided, and shall, subject to the terms and provisions herein set forth, operate and maintain the Leased Property in such manner as it determines in the exercise of reasonable judgment to provide adequate and reliable electric service to the customers.

10.2 Except for claims arising out of the acts caused by the affirmative negligence of the City or its representatives, the Company shall indemnify, defend and hold harmless the City, at the Company's expense, against all claims, expenses and liabilities arising from (a) the management, operation and maintenance of the Leased Property by the Company; (b) any default by the Company in the observance or performance of this Agreement; (c) any act or negligence of the Company, or its agents, contractors, employees or licensees, arising out of the management, operation and maintenance of the Leased Property by the Company, concerning which a claim is made against the City or the Leased Property. The City shall have a right, if it sees fit, to participate in such defense at its own expense, but the participation by the City in its own defense shall in no way abrogate or restrict the indemnity or responsibility imposed upon the Company by this paragraph. The City shall promptly notify the Company of any and all of the aforesaid claims asserted against the City.

10.3 Neither the City nor its agents or representatives have made any representations other than as provided or expressed in this Agreement with respect to the Leased Property, or any rights, easements, licenses, contracts or other

matters which are the subject of this Agreement. The taking of possession of the Leased Property by the Company shall be conclusive evidence that the Company accepts the same "as is" and will make no claims against the City with respect to the condition of the Leased Property, the validity of any agreement, or the title or restrictions that are imposed, or might be imposed, upon any of the Leased Property; provided, however, that the foregoing provisions of this Paragraph 10.3 shall in no way abrogate or impair any of the covenants, agreements, or representations of the City appearing elsewhere throughout this Agreement, and in the event of any such conflict or variation the covenants, agreements and representations of the City appearing elsewhere in this Agreement shall control and govern.

#### ARTICLE XI

Air pollution regulations will effectively prohibit the continued use of the existing coal fired Lawton Park generating facilities after January 1, 1975. The availability of natural gas and low sulfur fuel oil is restricted at the present time. In the event that the Company can obtain an allocation of either natural gas or low sulfur fuel oil along with a firm commitment for the supply of same by January 1, 1976, the Company will then complete the installation of the new gas/oil fired boiler at the Lawton Park generating plant. All expenditures made by the Company in the completion of said installation shall constitute "Betterments, Enlargements and Extensions" as hereinafter provided in Article XVII. These facilities will then be available for emergency stand-by service. The Company will maintain the Fourth Street Generating Unit so that it will be available for emergency stand-by service. The Company will also install the necessary facilities for purposes of maintaining emergency service to the filtration plant and the sewage treatment plant.

#### ARTICLE XII

It is mutually understood and agreed that in accordance with law the City has not been, and will not be, subject to property taxes on the Leased Property, but that the Company's leasehold interest in the Leased Property will be subject to

property taxes from and after it takes possession of the Leased Property and until the termination of the Agreement as herein provided. The Company agrees to pay all such property taxes legally and properly assessed and determined, as and when due. In addition, the Company will and by these presents does hereby agree to indemnify and hold the City harmless of and from any claim for any lien or encumbrance, obligation, or suit with respect to the payment of any such taxes, either upon the Leased Property or upon any betterments, enlargements or extensions to the Leased Property made by the Company.

#### ARTICLE XIII

13.1 The Company, subject to the provisions of this Agreement and while it is in possession of the Leased Property, shall at its own expense perform such maintenance as is necessary to maintain, preserve and keep the Leased Property in good working order and condition in keeping with the National Electric Safety Code and standards followed by the electric utility industry to assure the present customers of City Light an adequate and reliable supply of electric power. Expenditures classified as maintenance will be determined by the Uniform System of Accounts adopted by the Public Service Commission of Indiana for electric public utilities.

13.2 The Company agrees that the Board of Public Works shall have the authority and responsibility to continue to scrutinize the control and use of the Leased Property to see that it is properly maintained in accordance with this Agreement. If, in the judgment of the Board, the Company is not maintaining the Leased Property or is wasting the Leased Property, then the Board shall be responsible for reporting such findings in writing to the Common Council. It shall be the Board of Public Works' duty to enforce the provisions of this Agreement.

#### ARTICLE XIV

The Company, while in possession of the Leased Property, shall carry and maintain at its own cost and expense such types of insurance on the Leased Property



and in such amounts as the Company ordinarily carries on its properties of like kind. In the event loss, damage or destruction shall occur to the Leased Property, the proceeds of such policy or policies by reason thereof shall be applied by the Company in repairing, restoring or acquiring substitute or other property for the Leased Property lost damaged or destroyed. In the event the cost of such repairs restorations or substitutions shall be in excess of the proceeds of such insurance, such excess costs shall be borne by the Company. In the event the cost of such repairs, restorations or substitutions shall be less than the proceeds of such insurance, such proceeds shall be reinvested in Leased Property by the Company.

#### ARTICLE XV

In the event the Leased Property, or any part or parts thereof, is condemned by a public or private agency under the right of eminent domain, the Company shall apply the proceeds from such condemnation to the acquisition of substitute or other property for the Leased Property so condemned. In the event that the cost of such substitute or other property shall be in excess of the proceeds from the condemnation, such excess cost shall be borne by the Company with the right to recover by any and all proper methods, provided Company shall not have any right of recovery against City except as provided by law. Any excess costs borne by the Company shall be classified as "Betterments" as listed in Article XVII and shall be the property of the Company. In the event that the cost of such substitute or other property shall be less than the proceeds from the condemnation, such net proceeds shall be reinvested in Leased Property by the Company.

#### ARTICLE XVI

The average rate paid by all residential, commercial and industrial customers in Fort Wayne is about the same as paid by all customers served by the Company in Indiana. In 1973, its Fort Wayne customers paid an average rate of 1.688¢ per kilowatthour versus 1.678¢ per kilowatthour paid by all its Indiana customers.

At this time, the Company has no current plan to file with the Public Service Commission of Indiana a request for a rate increase, nor will it use the execution of the lease herein as a basis to file for such a rate increase.

The Company, as well as other electric suppliers, is subject to increasing costs and to severe environmental regulations which will require the expenditure of very large sums of money for new equipment and which also will result in much higher operating costs. The Company will exert all reasonable efforts to avoid having to meet these costs with rate increases. But, in any event, no increase in rates affecting Fort Wayne customers would be sought which was not similarly applicable to all customers of the Company in Indiana.

#### ARTICLE XVII

The Company, at its own cost and expense, shall make such betterments, enlargements, extensions and retirements to the electric distribution system of the Leased Property as it may deem necessary, advisable and economically feasible in keeping with the National Electric Safety Code and other standards generally followed throughout the electric utility industry to assure the present customers served from the Leased Property an adequate and reliable supply of electric power. Expenditures classified as betterments, enlargements and extensions will be determined by the Uniform System of Accounts adopted by the Public Service Commission of Indiana for electric public utilities and are hereinafter designated as "Betterments, Enlargements and Extensions."

#### ARTICLE XVIII

18.1 The City shall sell, abandon or otherwise dispose of any of the Leased Property whenever in the Company's judgment the same shall be worn out or obsolete, or no longer required or useful for and in connection with the operation or maintenance of the Leased Property (herein referred to as "obsolete"); provided, the Company shall not declare more than five (5%) percent of the original cost of the Leased Property obsolete in any one given year, and/or shall not replace more than five (5%) percent of the original cost of the Leased Property in any one given



year unless a force Majeur intervenes and forces such accelerated replacement, or unless the City shall agree in writing to a declaration of more than five (5%) percent of the original cost of the Leased Property as obsolete.

18.2 The sale of such Leased Property which shall have been declared to be obsolete shall be conducted by the Company and the net proceeds of the sale, after deducting the cost of the sale and removal costs incurred by the Company incident to the sale, shall be disbursed as follows:

(a) The Company may reinvest the net proceeds of the sale in additional property which shall be added to and become a part of the Leased Property and subject to all the terms, conditions and provisions of this Lease Agreement providing for Leased Property, or

(b) In the event that the funds are not reinvested by the Company within three months, to the extent that the sums are not so reinvested, the Company will cause said sums to be placed in an escrow account for the benefit of the City and shall pay the City a sum equal to seven percent (7%) per annum interest on the funds deposited in such escrow account until they have been reinvested in additional property to be made part of the Leased Property in accordance with subparagraph (a) above.

#### ARTICLE XIX

19.1 Betterments, Enlargements and Extensions of the Leased Property made by the Company from its own funds will be and remain the property of the Company notwithstanding affixation to the Leased Property.

19.2 The Company represents and warrants that any such Betterments, Enlargements and Extensions of the Leased Property shall be and remain free and clear of any and all liens, claims or other encumbrances of any kind or nature affecting such Betterments, Enlargements and Extensions of the Leased Property during the original term of this Lease, or any extension thereof, except for any and all liens, claims or other encumbrances established by or related to the Company's Mortgage and Deed of Trust, dated as of June 1, 1939 to Irving Trust Company and Frederick G. Herbst, Trustees and in any Indentures Supplemental thereto, (hereinafter called "Mortgage Liens").

19.3 Such Betterments, Enlargements and Extensions shall be and remain charged with a lien in favor of the City as additional security for the enforcement of all obligations of this Agreement to be kept and performed by the Company. Such lien shall be prior to all other contracts, liens or other encumbrances whatsoever except that City agrees its lien shall be subordinate and subject to the Mortgage Liens and Company shall have the right to encumber such Betterments, Enlargements and Extensions under said Mortgage Liens.

19.4 In the event that any such Betterments, Enlargements or Extensions of the Leased Property made by the Company should become the property of the City, either by reason of the default of the Company or by reason of the exercise of the Option to Purchase conferred upon the City by Section 25.1 hereof, the Company represents and warrants that such Betterments, Enlargements and Extensions made by the Company shall become the property of the City, free and clear of any such Mortgage Liens, and the Company shall indemnify and hold the City harmless to the extent that the City is required to discharge any such lien, claim or encumbrance upon the acquisition of the Betterments, Enlargements and Extensions. Any obligation of the Company with respect to such lien, claim or encumbrance shall continue to be the obligation of the Company and such obligation of the Company shall survive the exercise of the option granted the City under Section 25.1 hereof.

#### ARTICLE XX

Any joint use agreement, permit, easement or lease in any way relating to the Leased Property, which provides for pole attachments, shall be assigned by the City to the Company at the Closing, and if not assignable shall be terminated by the City as of the Closing or as soon as practicable thereafter; provided, however, that the City shall have the right to pole attachments, free of any charges for such attachments, for its police, fire, traffic and street lighting systems, except to the extent that any such attachments in the opinion of the Company unreasonably interfere with the Company's operation of the Leased Property. The Company will have a right to charge for C. A. T. V. pole attachments, the same rate that they charge

in other second class cities such as Marion, Muncie and South Bend. The Company will not interfere with City's rights to franchise a C.A.T.V. installation, and the Company may lease the poles to the franchisee in accordance with the above terms.

#### ARTICLE XXI

21.1 The Company will provide the electric energy for the City's street lighting system and will file and seek approval of the Public Service Commission of Indiana for a rate to supply this energy at one (1¢) per kilowatthour with the Company's fuel clause adjustment as filed and approved by the Public Service Commission of Indiana. As previously indicated Company has no current plans to file a petition for rate increase with the Public Service Commission of Indiana, and agrees to give City at least sixty (60) days written notice of any intention by Company to file for a rate increase in the future.

21.2 City agrees that failure of the City to pay for any and all classes of electrical service provided by the Company to the City shall constitute a default on the part of the City. In the event of such default and the failure by the City to correct the default after having been given thirty (30) days prior written notice thereof by Company, the amount owing by City for such service shall be deducted from the rental then due to City from Company.

#### ARTICLE XXII

The City shall deliver to the Company copies of all available maps, plats, surveys, plans, drawings, specifications and original invoices and other historical data of the City, relating to the original cost of the Leased Property. City also shall make available to the Company copies of all books, accounts, records and documents concerning the Leased Property which might be required by or be useful to the Company in setting up its books of accounts with respect to, or in the operation of, the Leased Property, it being understood that the Company shall not exercise such privileges otherwise than reasonably and with due regard to the convenience of the City.

### ARTICLE XXIII

In order that the Leased Property may be properly identified for the permanent records of the City and the Company, the City, prior to Closing, shall prepare and deliver to Company for its approval detailed property records and maps of the City's electric utility system comprising all of the Leased Property. Upon such records and maps being agreed upon by the City and the Company at the Closing, the same shall be binding on both the City and the Company in all future dealings with respect to the Leased Property.

### ARTICLE XXIV

24.1 The original term of this Agreement shall be for thirty-five (35) years from the date of Closing.

24.2(a) At the expiration of the original term, if this Agreement shall then be in full force and effect and the Company shall have performed all of its terms and conditions, the Company shall have the option to extend this Agreement, upon the same terms and conditions, excluding the provision for rent, for an extended term of fifteen (15) years to commence on the day following the expiration of the original term of this Agreement and continuing thereafter for fifteen (15) years (Hereinafter designated as "Extended Term"). If this Agreement shall have been so extended, then at the expiration of such Extended Term, the Company and the City shall have all their same respective rights, options, and provisions, and be subject to all their same respective conditions, obligations and covenants, as are herein provided for at the termination of the original term of this Agreement.

(b) The Company may extend the term of this Agreement for the Extended Term as is provided for in subparagraph (a), by the delivery of written notice to the City not less than six (6) months prior to the expiration of the original term, which written notice shall advise the City of the intention of the Company to extend the term during the option period. The Company and the City shall then have six (6) months within which to negotiate a new rental to be agreed upon between the City and the Company as applicable to the Extended Term of this Agreement, which rental shall be approved by the Public Service Commission of Indiana. In

the event that such rental is agreed upon by the City and the Company and is approved by the Public Service Commission of Indiana, it shall be reduced to writing and attached to and made a part of this Agreement. In the event that the City and the Company shall fail to agree in writing with respect to the rent during the Extended Term of this Agreement, then this Agreement shall expire on the expiration date of the original term hereof.

#### ARTICLE XXV

The parties hereto agree that upon the expiration of the original term of this Agreement, if not extended as herein provided, or at the expiration of the Extended Term if extended as herein provided, (hereinafter referred to as the "Termination Date"):

The City shall first have the option to acquire all such Betterments, Enlargements, and Extensions of the Leased Property made by the Company during the term of this Agreement and referred to in Articles XVII and XIX hereof as are owned by the Company at the Termination Date. The price to be paid by the City shall be the original cost depreciated to the Company of all such Betterments, Enlargements and Extensions made by the Company. Notice of intention to exercise this option must be given by the City to the Company at least twelve months (12) prior to the Termination Date. If the City chooses to exercise this option, it shall make payment in full for all such Betterments, Enlargements and Extensions on or before the Termination Date.

"Original cost depreciated to the Company", for purposes of this paragraph will be determined by the Uniform System of Accounts as adopted by the Public Service Commission of Indiana for electric utilities and in force and effect at the time of such entries.

For the purpose of determining what shall constitute Betterments, Enlargements and Extensions of the Leased Property made by the Company during the term of this Agreement, the Company will keep a separate ledger of accounts itemizing all Betterments, Enlargements and Extensions of the Leased Property and

separating such expenditures from expenditures classified as maintenance in accordance with the Uniform System of Accounts adopted by the Public Service Commission. The separately stated ledger of accounts for "Betterments, Enlargements and Extensions of the Leased Property" will be separately maintained and segregated from the other accounts of the Company and will be depreciated separately and regularly in accordance with the Uniform System of Accounts adopted by the Public Service Commission of Indiana, as from time to time in effect during the original term of this Agreement or the Extended Term.

#### ARTICLE XXVI

26.1(a) The following events (hereinafter called "Events of Default") shall constitute events of default:

1. If the Company shall at any time make default in the payment of any rental and such default shall continue for a period of thirty (30) days.
2. If the Company shall make default in the performance of any other covenant or obligation contained in this Agreement and such default shall continue for sixty (60) days after notice of such default has been given in writing to the Company by the City.
3. If any execution or attachment shall be issued whereby any of the Leased Property shall be taken or attempted to be taken by someone other than the City and the same shall not be vacated within three (3) years.
4. If the Company shall abandon the Leased Property (except as herein permitted).
5. If a decree or order shall have been entered by a court of competent jurisdiction adjudging the Company a bankrupt or insolvent or approving as properly filed a petition seeking reorganization of the Company under the Bankruptcy Act, or any other federal or state law relating to bankruptcy or insolvency, or appointing a receiver or decreeing or ordering the winding-up or liquidation of the affairs of the Company and any such decree or order shall remain in force undischarged and unstayed for a period of sixty (60) days, unless, prior to the expiration of such period, all the obligations of the Company hereunder shall have



been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by the trustees.

6. If Company shall institute proceedings to be adjudicated bankrupt or insolvent, or shall consent to the institution of bankruptcy or insolvency proceedings against it, or shall file a petition or answer or consent seeking reorganization or relief under the Bankruptcy Act or any other federal or state law relating to bankruptcy or insolvency, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or corporate action shall be taken by the Company in furtherance of any of the aforesaid purposes, unless, prior to the expiration of a period of sixty (60) days following any such event, all the obligations of the Company hereunder shall have been duly assumed in writing, pursuant to court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees.

26. 1(b) Upon the occurrence of any such Event of Default and during its continuance beyond any period of grace herein specified in respect thereof, the City may, in its discretion:

1. Sue for and require specific performance of this Agreement; or
2. Upon giving the Company thirty (30) days' notice in writing, terminate and cancel this Agreement and take possession of the Leased Property, including all Betterments, Enlargements and Extensions made by Company, and required to furnish to the then customers served from the Leased Property the same degree of electric service as existed at the time of the breach of this Agreement, either with or without process of law.

26. 2(a) In case of any such termination and cancellation prior to expiration of the original term or Extended Term of this Agreement, the City shall be entitled to receive from the Company, as and for liquidated damages, an amount (said

amount of damages being hereinafter called the "Liquidated Damages") equal to the sum total of the following:

1. The amount of any rental payments then accrued and unpaid.
2. All costs, including attorneys' fees, directly incurred by the City as a consequence of its entering into this Agreement and all costs, including attorneys' fees, directly incurred by the City in taking possession of the Leased Property, including Betterments, Enlargements and Extensions thereof, which are required to furnish electric service to the then customers served from the Leased Property.
3. In determining costs directly incurred by the City as a consequence of entering into this Agreement and/or taking possession of the Leased Property, the parties will first seek to negotiate the amount of said costs. If the parties fail to arrive at an agreement as to the amount of said costs, consideration will be given to the rent heretofore paid by the Company, and the Company will be given whatever credit is determined against said costs based upon such consideration.
4. All costs directly incurred by the City in restoring its electric utility distribution system to a condition in which it could be operated as a system separate from that of the Company and adequate to provide electrical service to the customers served from the Leased Property at the date of such cancellation.
5. The amount required to pay in full any liens or encumbrances, excepting the Mortgage Liens specified in Article XIX, Sec. 19.2 hereof, encumbering the Betterments, Enlargements and Extensions of the Leased Property which becomes the property of the City as hereinbefore provided.

#### ARTICLE XXVII

27.1 Upon reversion of the Leased Property, including Betterments, Enlargements and Extensions, to the City, as provided in Article XXVI, Section 26.1(b)2, for any of the causes specified in Article XXVI, Section 26.1(a), the Company (to the full extent of its ability to do so) shall assign to the City each and all of the contracts, agreements and instruments of every nature assigned by the City to the Company under and pursuant to the Agreement, and any and all contracts, assignments and



instruments of every nature which the Company has from third parties relating solely to the operation of the Leased Property; and the Company shall execute all necessary instruments and papers to make such assignments effective, and shall return and/or transfer to the City all maps and related documents essential to enable the City to manage and administer the Leased Property as a viable electric utility system; and, the City will assume any contracts, agreements or instruments of any nature which the Company has made with, or acquired from, third parties in relation to the Leased Property, as well as such contracts or instruments as relate to the ordinary course of the operation and maintenance of the Leased Property.

27.2 Upon reversion of the Leased Property to the City, upon the termination of the Agreement at the end of its original term or Extended Term, as the case may be, all revenue, income, accounts receivable, profits and rents in any way relating to the Leased Property prior to such reversion and all property of every kind and nature acquired and owned by the Company relating to the Leased Property, including Betterments, Enlargements and Extensions by the Company, shall be and remain with the Company, and the City shall execute all instruments and papers required by the Company for effecting the Company's receipt, ownership and possession of the same.

27.3 Upon reversion of the Leased Property by reason of Events of Default or the termination of the original term or Extended Term of the Agreement, as the case may be, the Company agrees to furnish to City all its electric power requirements at the lowest rates approved by the regulatory authority having jurisdiction for similar classes of service in the Company's Indiana service area.

27.4 In the event the Company ceases to operate the Leased Property, the Company shall deliver to the City copies of all available records, maps, plats, surveys, plans, drawings, specifications and original invoices and other historical data relating to the Leased Property.

In the event the Betterments, Enlargements or Extensions of the Leased Property made by the Company should become the property of the City by reason

of default of the Company as herein provided or the exercise of the Option by the City to Purchase as herein provided, the same types of instruments, material and information with respect to the Betterments, Enlargements and Extensions shall be made available to the City as those hereinabove described relating to the Leased Property.

27.5 Company also shall make available to the City copies of all books, accounts, records and documents concerning the Leased Property which might be required by or be useful to the City in setting up its books of accounts with respect to the Leased Property, it being understood that the City shall not exercise such privileges otherwise than reasonably and with due regard to the convenience of the Company.

#### ARTICLE XXVIII

28.1 The Agreement, and all grants, assignments, contracts and instruments of every kind and nature made pursuant to this Agreement shall be binding upon and inure to the benefit of, the respective successors and assigns of the City and of the Company.

28.2 Company shall pay all reasonable costs payable to third parties and attorneys' fees incurred by or against the City in enforcing the obligations of the Agreement. Such attorneys' fees shall, for purposes of the default and damage provisions contained herein, be considered an element of the Liquidated Damages.

#### ARTICLE XXIX

No failure or delay on the part of either party hereto in the performance of any covenant or condition of this Agreement shall constitute a default if such delay or failure is caused by any fire, riot, strike, tornado, weather conditions, war, or other unavoidable casualty, accident, or by any lawful statute or governmental regulation, or order of any court or regulatory body, and the time for performing any covenant, agreement or provision contained in this Agreement shall be extended by such time as the performance thereof may have been delayed or prevented by reason of any of the foregoing; provided, however, the foregoing provisions shall not be applicable to the payment of rent.

ARTICLE XXX

The City and the Company hereby covenant and agree that this Agreement or a Memorandum of Lease relating to this Agreement shall be recorded to comply with I. C. Sections 32-1-2-16 and 32-1-2-31, Burns Indiana Statutes 55-119 and 56-136.

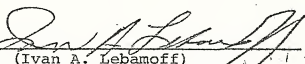
ARTICLE XXXI

If any of the provisions of this Agreement shall contravene, or be invalid under, the laws of this State, County or jurisdiction where used, such contravention or invalidity shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid in this particular State, County or jurisdiction, and the rights and obligations of said City and Company shall be construed and enforced accordingly; provided further that the City and/or the Company shall have the right prior to Closing to void the Lease upon thirty (30) days' notice in writing in the event any of the provisions are held to be invalid or are modified as herein provided.

IN WITNESS WHEREOF, the City of Fort Wayne, Indiana (City) has caused its corporate name to be hereunto affixed, and this instrument to be signed, sealed and delivered by the Mayor thereunto duly authorized, and attested by its City Clerk in behalf of the City, and its seal to be affixed; and Indiana & Michigan Electric Company (Company) has likewise caused its corporate name to be hereunto affixed, and this instrument to be signed, sealed and delivered by its Executive Vice-President and attested by its Assistant Secretary thereunto duly authorized, and its corporate seal to be affixed, all on the day and year first above written; this Agreement being executed in duplicate.

CITY OF FORT WAYNE, INDIANA

By

  
(Ivan A. Lebamoff)  
Mayor

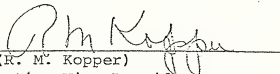
ATTEST:

  
(Charles W. Westerman)  
City Clerk

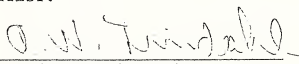


INDIANA & MICHIGAN ELECTRIC CO.

By

  
(R. M. Kopper)  
Executive Vice-President

ATTEST:


  
(A. W. Lindahl)  
Assistant Secretary



STATE OF INDIANA       )  
                              ) SS:  
COUNTY OF ALLEN       )

I, Robert Thomas L. Shaw, A Notary Public in  
and for the County and State aforesaid, duly commissioned  
and qualified, do hereby certify that, on this 13<sup>th</sup>  
day of September, 1974, before me personally  
appeared Ivan A. Lebamoff and Charles W. Westerman, to me  
well known and personally known to me to be, respectively,  
the Mayor and City Clerk of the City of Fort Wayne, a muni-  
cipal corporation of the State of Indiana, lessor in the fore-  
going Lease Agreement, and the persons who, as such Mayor  
and City Clerk, respectively, of said City, executed the said  
Lease Agreement in the name and for and on behalf of said  
City of Fort Wayne; and said Ivan A. Lebamoff and Charles W.  
Westerman, acknowledged that, as such Mayor and City Clerk,  
respectively, of said City of Fort Wayne, they executed the said  
Lease Agreement in the name and for and on behalf of said City  
as their free and voluntary act and deed and the free and  
voluntary act and deed of said City, pursuant to due and  
proper authorization of the Common Council of said City in  
accordance with the law in such case made and provided.

IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my notarial seal, on the day, month and year aforesaid.

Robert Thomas L. Shaw  
Notary Public  


My Commission expires:

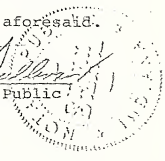
November 15, 1976

STATE OF INDIANA       )  
                              ) SS:  
COUNTY OF ALLEN       )

I, Robert Thomas Sullivan, A Notary Public in  
and for the County and State aforesaid, duly commissioned  
and qualified, do hereby certify that, on this 13<sup>th</sup>  
day of September, 1974, before me personally  
appeared R. M. Kopper and A. W. Lindahl, to me well known and  
personally known to me to be, respectively, the Executive Vice-  
President and an Assistant Secretary of Indiana & Michigan  
Electric Company, a corporation of the State of Indiana, lessee  
in the foregoing Lease Agreement, and the persons who, as  
such Executive Vice-President and Assistant Secretary, respect-  
ively, of said Company, executed the said Lease Agreement in  
the name and for and on behalf of said Company; and said R. M.  
Kopper and A. W. Lindahl, acknowledged that, as such Executive  
Vice-President and Assistant Secretary, respectively, of said  
Company, they executed the said Lease Agreement in the name  
and for and on behalf of said Company as their free and voluntary  
act and deed and the free and voluntary act and deed of said  
Company, pursuant to due and proper authorization of the Board  
of Directors of said Company in accordance with the law in  
such case made and provided.

IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my notarial seal, on the day, month and year aforesaid.

Robert Thomas Sullivan  
Notary Public



My Commission expires:

November 15, 1976



ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT made and entered into at Fort Wayne, Allen County, Indiana, on this 8th day of March, 1974, by and between the City of Fort Wayne, a municipal corporation of the State of Indiana (hereinafter referred to as "City"), and Indiana & Michigan Electric Company, an Indiana corporation (hereinafter referred to as "Company"),

W I T N E S S E T H:

WHEREAS, City and Company are negotiating the terms of a Lease Agreement pursuant to which City will lease to Company all of the electric utility system as now owned, operated and used and useful by the City in the rendering of electric service in and adjacent to Fort Wayne, Indiana, which system is described in more detail in the said Proposed Lease Agreement (hereinafter referred to as "Proposed Lease Agreement"); and

WHEREAS, paragraph 2.2 of the Proposed Lease Agreement contemplates that, prior to its execution, Company will have already agreed, in writing, to assume certain of City's obligations which shall be set forth in a separate written instrument which will be marked Exhibit "A" to the Proposed Lease Agreement; and

WHEREAS, City and Company are now in agreement as to which obligations ought to be provided for in Exhibit "A" to the Proposed Lease Agreement and this Assignment and Assumption

Agreement is executed for the sole purpose of becoming Exhibit "A" to the Proposed Lease Agreement.

NOW THEREFORE, as an inducement to each other to enter into and perform their respective obligations as set out in the Proposed Lease Agreement and in consideration of the mutual benefits to be derived by each of the parties hereto from the execution and performance of the Proposed Lease Agreement, the parties hereto represent and agree as follows:

1. As used herein, the term "Closing" shall have the same meaning given to it in the Proposed Lease Agreement.

2. City represents to Company that it has assigned the following enumerated work order numbers to the following described projects which will maintain, expand or improve the electric utility system which is defined as the "Leased Property" in the Proposed Lease Agreement (hereinafter individually referred to as "Work Order" and collectively referred to as "Work Orders"); that agreements, contracts and/or purchase orders or Work Orders have been, or, prior to the Closing, may be issued for the work to be performed, services to be rendered and material and equipment to be furnished to perform some or all of the above-described projects; and that the maximum liability of City under each Work Order is, and, as of the Closing, will be in the amount set opposite each respective Work Order below, to-wit:

<u>WORK ORDER NO.</u>	<u>DESCRIPTION OF PROJECT</u>	<u>TOTAL COST</u>
40808	Install demand metering FWHA St. Mary's and Margaret	\$ 1,000.
40794	Rebuild secondary east of Calhoun North and south of Lexington	1,000.



<u>WORK ORDER NO.</u>	<u>DESCRIPTION OF PROJECT</u>	<u>TOTAL COST</u>
40758	Change transformers and rebuild secondary in the alley south of Pittsburgh west of Edsall	1,200.
40696	Replace capacitor bank Center Street south of Elm	1,100.
40686	Accommodate I & M conversion to 12 kv west of Anthony Vance to St. Joe River Drive	1,800.
40673	Rebuild secondary east of Davis north south of Link	1,200.
40660	Install 4 rental lights at University Park Medical Clinic	1,000.
40641	Southeast Substation	260,000.
40640	South Substation	260,000.
40617	Demand metering at the Red Lobster	1,000.
40607	Replace six oil circuit breakers at Lawton with 2.5 million kv breakers. Old breakers to be used in substations	100,000.
40594	Orthodox Church on 5420 S. Anthony - transformers and new service	1,200.
40552	Transmissior lines for South and Southeast Substations	120,000.
40441	Rebuild secondary south of DeWald west of Hoagland	1,800.
40386	Install transformers and split secondary north of Taber, west of Warsaw	800.
40366 and 39750	Install power to FWHA Tillman and Decatur Roads	5,000.
40294	Rebuild secondary and install transformers in the alley south of Eliza west of McCullouch	\$ 2,500.

<u>WORK ORDER NO.</u>	<u>DESCRIPTION OF PROJECT</u>	<u>TOTAL COST</u>
40284	Install transformers and rebuild secondary alley north of High west of St. Mary's	900.
40250	Rebuild primary to accomodate I & M 13.8 kv tower Hanna and U.S. 27	1,100.
40198	Reconductor primary east of Tacoma south of Pasedena	900.
40192	Install transformers and split secondary south of Colonial west of Plaza	1,400.
40182	Reconductor primary Eastbrook and North Clinton	1,200.
40156	Day Care Center, 315 Dalman, service pole, drops and metering	800.
40133	Move steel pole in the alley at the rear of 1829 Alliger	800.
40129	Reconductor primary Warsaw and Wiebke	600.
40100	Reroute 34.5 kv lines west of Lake-side Jr. High	3,000.
40065	Rebuild secondary and install new transformers north of Wiebke east of Clinton	800.
40054	Alley north of Scott east of Thompson install transformers and rebuild secondary	2,500
39988	New pole and line rearrangement Protective Coating on Birchwood	800.
39982	Alley rebuild west of Williams south of Calhoun	3,500.
39967	Rebuild secondary south of Hugh east of Ohio	800.
39961	Primary rebuild south side of Vance at Hobson	5,000.
39929	Sigrist Building (90%) complete	1,000. (remaining)

<u>WORK ORDER NO.</u>	<u>DESCRIPTION OF PROJECT</u>	<u>TOTAL COST</u>
39877	Install transformers and rebuild secondary north of Drexel west of Holton	1,200.
39874	Rebuild secondary north of Drexel east of Reed	1,200.
39871	Rebuild secondary south of Branning west of Holton	900.
39870	South of Rudisill west of Hoagland install transformers and rebuild secondary	1,200.
39852	North of Vance between Ralston and Carew I & M 12 kv conversion	1,500.
39804	Alley south of Roy east of Raymond secondary rebuild and install transformers	1,500.
39797	Secondary rebuild and install transformers alley north of Sinclair east of Tyler	900.
39796	Alley north of Howell east of Tyler rebuild	900.
39774	Rebuild secondary install transformers south of Packard west of Clinton	1,500.
39773	Rebuild secondary install transformers north of Hamilton west of Oliver	1,400.
39747	Power for ARCO Rubber	5,000.
39723	South of New Haven Ave. east of Warren rebuild	800.
39713	Rebuild alley east of Hayden	1,000.
39702	South of McKee east of Hanna transformers and secondary rebuild	1,200.
39690	Freeman and Ontario transformers and secondary rebuild	800.
39681	State east of Byer install transformers and secondary rebuild	1,000.
39676	Rebuild Jefferson and Van Buren	1,400.

<u>WORK ORDER NO.</u>	<u>DESCRIPTION OF PROJECT</u>	<u>TOTAL COST</u>
39670	Alley south of Third between Orchard and Barthold Rebuild and add transformers	2,200.
38932	Tertiary Treatment Plant - 1st Stage	20,000.
40863	University Park electric heated nursing home	7,000.
40779	Church of the Nazarene expansion on Fairfield	7,000.
40933	Lutheran Hospital expansion	60,000.
Number Not Yet Assigned	Water Pollution Control Plant expansion which may be done with HUD Funds - Second Stage	60,000.
"	Wallace - Lawton Park high line 34.5 kv	120,000.

3. Effective as of the Closing, City hereby assigns and sets over unto Company all of City's rights, title and interest in, to and resulting from any and all bids, proposals and offers received by it, agreements or contracts entered into by it and purchase orders or work orders issued by it for services to be rendered, work to be performed and/or materials or equipment to be furnished in accomplishing any and all of the above-described projects, without regard to whether such have been issued or received prior hereto or are issued or received between the date hereof and the Closing.

4. City represents and agrees that:

A. As of the Closing, there will be no defaults in, or breaches of the City's obligations as set forth in any of the said agreements, contracts or purchase orders or Work Orders; and

B. City will promptly pay, as and when they come due, all bills and invoices for services rendered, work performed and materials or equipment furnished prior to the Closing pursuant to any of the said agreements, contracts or purchase orders or Work Orders relating to any of the above enumerated projects.

C. All of the Work Orders enumerated above are for work to be performed, services to be rendered or materials or equipment to be furnished to the electric utility system which is defined as the "Leased Property" in the Proposed Lease Agreement.

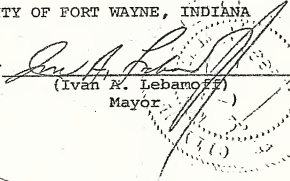
5. Effective as of the Closing, Company assumes and agrees to pay and perform, to the extent of the amount of cost set opposite each Work Order in Paragraph 2, hereof, all of the City's obligations to parties not a party to this Agreement for any service rendered, work performed or materials or equipment furnished on or after the Closing, pursuant to contracts or agreements executed and delivered by City or purchase orders or Work Orders issued by City prior to the Closing, to accomplish any of the above-described projects.

IN WITNESS WHEREOF, the City of Fort Wayne, Indiana (City) has caused its corporate name to be hereunto affixed, and this instrument to be signed, sealed and delivered by its Mayor thereunto duly authorized, and attested by its City Clerk in behalf of the City, and its seal to be affixed; and Indiana &

Michigan Electric Company (Company) has likewise caused its corporate name to be hereunto affixed, and this instrument to be signed, sealed and delivered by its Executive Vice-President and attested by its Assistant Secretary thereunto duly authorized, and its corporate seal to be affixed, all on the day and year first above written; this Agreement being executed in duplicate.

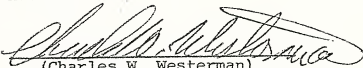
CITY OF FORT WAYNE, INDIANA

By

  
(Ivan K. Lebamoff)

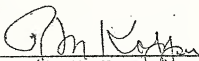
Mayor

ATTEST:

  
(Charles W. Westerman)  
City Clerk

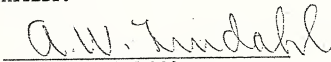
INDIANA & MICHIGAN ELECTRIC CO.

By

  
(R. M. Kopper)

Executive Vice-President

ATTEST:

  
(A. W. Lindahl)  
Assistant Secretary

Vote

Roll Call on 74-09-12  
as amended

A G E N D A

SPECIAL SESSION

COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA

7:30 P.M.

SPECIAL SESSION - FRIDAY, SEPTEMBER 13, 1974

COMMON COUNCIL CHAMBERS - ROOM 126  
CITY COUNTY BUILDING

ORDER OF BUSINESS

CALL TO ORDER

SAMUEL J. TALARICO  
PRESIDENT OF COUNCIL

INVOCATION

POSTING OF THE NATIONAL COLORS

SERGEANT-AT-ARMS, JERRY MUNGOVAN

ROLL CALL OF COMMON COUNCIL

CHARLES W. WESTERMAN  
CITY CLERK

*6*  
*1*  
*2*  
BURNS ✓, HINGA ✓, KRAUS A, MOSES N, NUCKOLS ✓,  
DONALD SCHMIDT A, VIVIAN SCHMIDT ✓, STIER ✓, TALARICO ✓,

COMMUNICATIONS

- A. Call of meeting - Ivan A. Lebamoff, Mayor  
B. Notification of Councilmen - Charles W. Westerman, City Clerk  
*J. M. Keller*  
C. Councilman Communication - Donald J. Schmidt  
D. Councilman Communication - Eugene Kraus, Jr.

INTRODUCTION OF ORDINANCE

Only matter for consideration at this meeting is action be taken on a specific matter pursuant to the call of this Special Session. Said Resolution was hereby accepted and presented to the Council by the City Clerk, pursuant to the rules of this Council.

*Passed*  
ACTION

*6-1-2*  
R-74-09-12

A RESOLUTION authorizing the Mayor to agree to certain clarification in a Lease Agreement with Indiana & Michigan Electric Company.

(over)



CHAIR OPEN FOR COMMENTS - FROM COUNCILMEN AND CITIZENS

ADJOURNMENT

BILL NO. R-74-09-12 (AS AMENDED)

RESOLUTION NO. R-74-74

A RESOLUTION authorizing the Mayor to agree to certain clarification in a Lease Agreement with Indiana & Michigan Electric Company.

WHEREAS, the Indiana & Michigan Electric Company ("I & M") is requesting an expression from the City of Fort Wayne with regard to clarification and understanding of certain language contained in paragraph 2 of Article XVI of that certain proposed Lease Agreement with said City, which was the subject of Declaratory Resolution No. R-13-74, adopted by the Common Council of said City on March 12, 1974; and

WHEREAS, I & M has submitted a letter to the City embodying such clarification and understanding, a copy of which letter is attached to this Resolution and made a part hereof; and

WHEREAS, the Common Council finds it unnecessary to consider the accuracy of the other matters set forth in said letter;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA THAT:

The Mayor of the City be and he hereby is authorized to indicate the acceptance of the City by signing said letter in the space therein provided, such acceptance being limited to acceptance of the clarification and understanding of paragraph 2 of the aforesaid Article XVI, without prejudice to any of the City's other rights.

Paul M. Burns  
Councilman

Read the third time in full and on motion by Burns, seconded by Hinga, and duly adopted, placed on its passage. Passed by the following vote:

Ayes: Six  
Burns, Hinga, Nuckols, V. Schmidt, Stier, Talarico  
Nays: One  
Moses  
Absent: Two  
Kraus, D. Schmidt

Date: 9-13-74

Charles W. Westerman  
City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, Resolution No. R-74-74 on the 13th day of September, 1974.

ATTEST: (SEAL)

Charles W. Westerman  
City Clerk

Samuel J. Talarico  
Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of September, 1974, at the hour of 9:30 o'clock P.M., E.S.T.

Charles W. Westerman  
City Clerk

Approved and signed by me this 13th day of September, 1974, at the hour of 9:30 P.M., E.S.T.

Ivan A. Lebamoff  
Mayor

COMMUNICATION FROM INDIANA & MICHIGAN ELECTRIC COMPANY

INDIANA & MICHIGAN ELECTRIC COMPANY  
2101 Spy Run Avenue  
P.O. Box 60  
Fort Wayne, Indiana 40801

September 12, 1974

City of Fort Wayne  
City-County Building  
Fort Wayne, Indiana 46802

Attention: Mayor and Common Council

Gentlemen:

By letter of August 24, 1972, the City of Fort Wayne requested that Indiana & Michigan Electric Company submit a lease proposal for the Fort Wayne City Light facilities. Preliminary studies, investigations and conferences ensued for a number of months and a preliminary draft of a lease proposal was prepared and submitted. Study, negotiations and conferences with respect to the terms and provisions of a lease agreement were then pursued by representatives and counsel for the City and the Company until March 8, 1974, when the terms and provisions of a lease agreement was finalized by the Mayor of the City and proper

representatives of the Company.

On March 12, 1974, the Common Council adopted its Declaratory Resolution, including a copy of the Lease Agreement, which provided for the submission of such Resolution and Lease Agreement to the qualified voters of Fort Wayne at a special election to be held on May 7, 1974. At such special election more than a majority of the votes were cast for the Declaratory Resolution.

On June 11, 1974, the Common Council adopted its ordinance confirming the Declaratory Resolution and the execution of the policy thereof and authorized the execution and performance of the Lease Agreement.

Since representatives and counsel of the City and the Company put the Lease Agreement in final form on March 8, 1974, serious and important costs and financial and operational problems have arisen with respect to the Company's public utility business, finances and operations. Such costs and problems were not evident or in existence when the provisions of the Lease Agreement were negotiated and put in final form.

By reason of the forgoing increased costs and financial and operational problems and developments, it has become necessary for the Company to file petitions with the Public Service Commission of Indiana to increase its present electric rates applicable to all classes of Indiana customers. The situation is so serious and immediate that it was necessary to promptly seek rate increases to prevent injury to the Company's business and properties, and lack of proper and reliable and adequate service to its customers.

In view of the foregoing, the Company has considered the provisions of Article XVI of the Lease Agreement relative to the Company's rate increases to its customers including customers now served by the City. It provides:

"At this time, the Company has no current plan to file with the Public Service Commission of Indiana a request for a rate increase, nor will it use the execution of the lease herein as a basis to file for such a rate increase."

"The Company, as well as other electric suppliers, is subject to increasing costs and to severe environmental regulations which will require the expenditure of very large sums of money for new equipment and which also will result in much higher operating costs. The Company will exert all reasonable efforts to avoid having to meet these costs with rate increase. But, in any event, no increase in rates affecting Fort Wayne customers would be sought which was not sought similarly applicable to all customers of the Company in Indiana."

At the time the Lease Agreement was finalized, the Company had no current plans to file with the Public Service Commission of Indiana a request for rate increases.

Article XVI is only a recital of the Company's plans as of March 8, 1974, and is not a covenant or obligation with regard to rate increases subsequent to that date.

Please review and consider the contents of this letter, and indicate your understanding that the Company in making plans to file, and the filing, with the Public Service Commission proceedings for rate increases applicable to all Indiana customers and proceeding to obtain, and in obtaining; such rate increases are in no way now, at the time of the execution of the Lease Agreement, or at any time thereafter, prohibited by, or in violation of, or in default of, any of the provisions of the Lease Agreement. Your response to this letter is most important.

Very truly yours,

INDIANA & MICHIGAN ELECTRIC COMPANY

By R. M. Kopper  
R. M. Kopper, Executive Vice President

ACCEPTANCE

The City of Fort Wayne, Indiana pursuant to authorization of its Common Council, concurs in and accepts the understandings set forth in the above and foregoing letter.

Dated in Fort Wayne, Indiana, this 13th day of September, 1974.

CITY OF FORT WAYNE, INDIANA

Ivan A. Lebamoff  
Ivan Lebamoff, Mayor

Made a matter of record 9-13-74

Charles W. Westerman  
City Clerk